

CONFIDENTIAL
Jens Brochner – April 29, 2021

Page 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

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REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

EXAMINATION OF

JENS BROCHNER

DATE: April 29, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
Jens Brochner – April 29, 2021

Page 12

1 I N G E R G R E G E R S E N ,

2 Called as the official interpreter in
3 this action, was duly sworn to faithfully translate
4 the questions to the witness from English to Danish
5 and the answers from Danish to English.

6

7

8 J E N S B R O C H N E R , ,

9 called as a witness, having been first
10 duly sworn according to law, testifies as follows:

11

12

13 EXAMINATION BY MR. SCHOENFELD:

14 Q Good morning, Mr. Brochner.

15 Can you hear me okay?

16 A Yes.

17 Q Okay. Could you please state your
18 full name for the record?

19 A Jens. So the two middle names is
20 C-H-I-S-T-I-A-N, and the next name is
21 V-E-D-I-G-E, Brochner.

22 Q Mr. Brochner, are you currently
23 employed?

24 A Yes. I'm employed as a secretary
25 of the Danish Ministry of Taxation.

CONFIDENTIAL
Jens Brochner – April 29, 2021

Page 126

1 So the responsibility of management
2 has to address the individual points of
3 criticism, and not necessarily agree to every
4 point.

5 Q When you first read this report in
6 September of 2015, did you inquire as to what
7 steps were taken in May of 2013 to respond to
8 SIR's criticism?

9 A Yes, I did.

10 Q Did you ask why those action plans
11 were insufficient to prevent the fraud that
12 was disclosed to you as of the summer of
13 2015?

14 MR. OXFORD: Objection to form.

15 A I disagree on the grounds for the
16 question. There's nowhere -- there's no
17 place in this report where they mention
18 fraud.

19 Q The recommendation 3.4 on Page 15
20 says that --

21 MR. OXFORD: You interrupted his
22 answer.

23 MR. SCHOENFELD: I'm sorry?

24 MR. OXFORD: He hasn't finished his
25 answer. Please let him finish.

CONFIDENTIAL
Jens Brochner - April 29, 2021

Page 127

1 A So Item 3 states that "SKAT must
2 take a better position or secure itself
3 better to avoid incorrect payment or
4 disbursement of dividend withholding tax."

5 And that concern, specifically as
6 it's stated on Page 6 of the report, it
7 concerns that bank scheme, and not the
8 so-called forms scheme. And the fraud took
9 place on the forms scheme.

10 Q And that distinction of the form
11 scheme and the fraud scheme is in the basis
12 of this report.

13 Is that your testimony?

14 A I'm sorry. I couldn't hear what
15 you said.

16 Q I said that that distinction
17 between the form scheme and the bank scheme
18 is clear from the face of this report.

19 Is that your testimony?

20 A It's not something that I say. It
21 can be read from Page 6 of the report.

22 Q So SIR's report is pretty clear.
23 Correct?

24 THE INTERPRETER: So what?

25 Q SIR's report is pretty clear.

CONFIDENTIAL
Jens Brochner – April 29, 2021

Page 129

1 reports with recommendations.

2 But the National Audit Office did
3 not read it as a report with serious
4 criticism and it doesn't say anything about
5 fraud in the report.

6 Q Mr. Brochner, where on Page 6 are
7 you pointing for the fact that the criticism
8 was leveled only with respect to the bank
9 scheme and not the form scheme?

10 MR. OXFORD: Objection. You can
11 answer again.

12 THE INTERPRETER: But he couldn't
13 hear the question.

14 MR. OXFORD: Alan, can you repeat
15 the question, please?

16 THE INTERPRETER: It was completely
17 blurred.

18 Q You reference Page 6 as the basis
19 for your understanding that the -- you
20 reference Page 6 as the basis for your
21 understanding that the criticism we were
22 reviewing refers only to the bank scheme and
23 not the form scheme.

24 Correct?

25 A Yes, that's correct.

CONFIDENTIAL
Jens Brochner - April 29, 2021

Page 133

1 A Yes, that's correct. It's a report
2 they made after the fraud was detected.

3 Q And the report entails a review,
4 indications of the fraud, prior to its
5 detection in 2015.

6 Correct?

7 MR. OXFORD: Objection to the form.

8 THE INTERPRETER: Could you please
9 repeat the question? I couldn't hear it
10 all.

11 Q Sure. The report entails a review
12 of indications of the fraud prior to its
13 detection in 2015.

14 Correct?

15 A That's rationalization in
16 hindsight. The report was issued after the
17 fraud was detected.

18 The National Audit Office's reading
19 of the 2013 report is the same as my reading,
20 not a particularly critical report, not
21 pleading particular criticism.

22 Q Well, you concluded that the 2013
23 report was about the bank program and not the
24 form program.

25 Correct?

CONFIDENTIAL
Jens Brochner – April 29, 2021

Page 136

1 A So in the — in the report from
2 '15, it says in Paragraph 34 that "SKAT needs
3 to protect itself better against wrongful
4 reimbursement of dividend tax," and that that
5 concerns the bank scheme.

6 And that appears on Page 6 of the
7 report.

8 Q That's your answer to the question?

9 A Yes.

10 Q Okay. It's your testimony that you
11 never — you didn't receive the 2013 report
12 in 2013.

13 Correct?

14 MR. OXFORD: Objection, asked and
15 answered.

16 A So as I said before, by a
17 regrettable mistake, I did not receive the
18 report. The report was sent according to the
19 completely normal procedures.

20 It was sent to the responsible
21 management in SKAT and to the National
22 Office — Audit Office. And according to
23 normal procedure, an action plan was
24 prepared.

25 Q If you had received the report in